

Public Law 98-273
98th Congress

An Act

To amend the Perishable Agricultural Commodities Act, 1930, by impressing a trust on the commodities and sales proceeds of perishable agricultural commodities for the benefit of the unpaid seller, and for other purposes.

May 7, 1984

[H.R. 3867]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e) is amended by adding at the end thereof a new subsection to read as follows:

“(c)(1) It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities, or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

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trade.

“(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which is dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association (as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), and its members.

“(3) The unpaid supplier, seller, or agent shall lose the benefits of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker and has filed such notice with the Secretary within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. When the parties expressly agree to a payment time period different from that established by the Secretary, a copy of any such agree-

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ment shall be filed in the records of each party to the transaction and the terms of payment shall be disclosed on invoices, accountings, and other documents relating to the transaction.

"(4) The several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust."

SEC. 2. Section 2(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499b(4)) is amended by adding after the semicolon at the end of the paragraph "or to fail to maintain the trust as required under section 5(c);".

Approved May 7, 1984.

"(c) It is hereby found that a burden on the public interest is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, association, or firm, or on their own interest in such commodities, or on investments of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

"(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all investments of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by each commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or agents of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers or agents. Payment shall not be considered to have been made if the supplier or agent receives a payment instrument which is negotiable. The provisions of this subsection shall not apply to transactions between a cooperative association as defined in section 102 of the Agricultural Marketing Act (12 U.S.C. 102) and its members.

"(3) The unpaid supplier, seller, or agent shall lose the benefit of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker, and has filed such notice with the Secretary within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. When the parties expressly agree to a payment time period different from that established by the Secretary.

LEGISLATIVE HISTORY—H.R. 3867:

HOUSE REPORT No. 98-543 (Comm. on Agriculture).

CONGRESSIONAL RECORD:

Vol. 129 (1983): Nov. 15, considered and passed House.

Vol. 130 (1984): Apr. 12, considered and passed Senate.